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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,614	07/18/2003	Martin Kaspar	028983.48221D1	2904
23911	7590	09/03/2004	EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			CIRIC, LJILJANA V	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	<i>M</i>
	10/621,614	KASPAR ET AL.	
	Examiner Ljiljana (Lil) V. Ciric <i>JKC</i>	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 April 2004.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 19-31 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 21-31 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. 09/425,613.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 18 July 2003.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of Group II (readable on claims 21-31 in the reply filed April 8, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 19 and 20 are hereby withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to non-elected species, there being no allowable generic or linking claim. Election was made **without** proper traverse in the reply filed on April 8, 2004.

### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 21 through 24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5 through 7 of U.S. Patent No. 6,446,714 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because patented claims 1 and 5 through 7, either along or in combination, recite

all of the limitations of application claims 21 through 24. Note, for example, that the sleeve as recited in claim 5 of the patent is readable on the cartridge as recited in claim 21 of the application, and the groove as recited in claim 1 of the patent is readable on or an obvious variation of the deformation as recited in claim 23 of the application. Application claims 21 through 24 are at most only different from patented claims 1 and 5 through 7 in that the application claims lack some of the claimed elements (i.e., a tube piece which is coaxial with the collector as recited in claim 6 of the patent) of the patented claims; thus, the application claims are not patentably distinct from the patented claims because it is obvious to eliminate an element and its function. See *In re Karlson*, 136 USPQ 184 (CCPA 1963).

5. Claims 21 through 31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 through 11 of U.S. Patent No. 6,629,560 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because patented claims 1 through 11, either along or in combination, recite all of the limitations of application claims 21 through 31. Since application claims 21 through 31 are only different from patented claims 1 through 11 in that the application claims lack some of the claimed elements of the patented claims (i.e., dryer granulates contained in the cartridge as recited in claim 1 of the patent), the application claims are not patentably distinct from the patented claims because adding or deleting a material worked upon by an apparatus (i.e., the dryer granules) is obvious and does not by itself impart patentable distinctness to the apparatus.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Cric, whose telephone number is (703) 308-3925.

While she works a flexible schedule that varies from day to day and from week to week,

Examiner Cirim may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel, can be reached on (703) 308-1272.

The NEW central official fax phone number is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

*Ljiljana V. Cirim*  
LJILJANA V. CIRIC  
PRIMARY EXAMINER  
ART UNIT 3753